

E-Filed 1/30/06

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MICHAEL JOHN YANCEY,

Petitioner,

v.

JEANNE S. WOODFORD, Director of the
California Department of Corrections, et al.,

Respondents.

Case Number C 05-01028 JF

ORDER¹ GRANTING MOTION FOR
APPOINTMENT OF COUNSEL

[Docket No. 11]

On March 11, 2005, Petitioner Michael John Yancey filed a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254. On February 8, 2001, Petitioner was found guilty in Santa Clara Superior Court of first degree murder and sentenced to a term of 25 years to life in state prison. He brings the following claims, all of which have been exhausted in state court: (1) “At trial, petitioner had no opportunity to cross-examine his co-defendant, whose accusatory statement to police was revealed to the jury in violation of the Sixth Amendment,” (2) “At trial, the prosecutor unconstitutionally argued that petitioner was guilty because his co-defendant

¹ This disposition is not designated for publication and may not be cited.

1 refused to testify,” (3) “The trial court’s insistence on trying petitioner along with his
2 co-defendant was fundamentally unfair and violated the Due Process Clause,” (4) “At trial, the
3 prosecutor unconstitutionally impeached petitioner’s testimony with the fact that petitioner
4 invoked his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), not to speak to police
5 investigators, in violation of the Due Process Clause,” (5) “At trial, the prosecutor
6 unconstitutionally presented statements elicited from petitioner in violation of his rights under
7 the Due Process Clause and *Miranda*, supra, among others,” and (6) “The trial court incorrectly
8 instructed the jury that reasonable doubt is ‘what you feel in your conscience,’ in violation of
9 petitioner’s due process rights.”

10 On January 19, 2006, Petitioner filed the instant motion for appointment of counsel,
11 seeking appointment of Dennis P. Riordan (“Riordan”), effective of December 23, 2003, the
12 date that the California Supreme Court denied petitioner’s petition for review. The Sixth
13 Amendment’s right to counsel does not apply in habeas corpus actions. *Knaubert v. Goldsmith*,
14 791 F.2d 722, 728 (9th Cir. 1986). However, a district court may appoint counsel to represent
15 any financially eligible habeas petitioner whenever it “determines that the interests of justice so
16 require.” 18 U.S.C. § 3006A(a)(2)(B); *see also Knaubert*, 791 F.2d at 728. In its discretion, this
17 Court concludes that the interests of justice require the appointment of counsel in the instant
18 habeas corpus action. Petitioner’s claims are legally complicated and potentially meritorious.

19 A petitioner is financially eligible for the appointment of counsel if he or she is
20 “financially unable to obtain adequate representation.” 18 U.S.C. § 3006A(a). Unless the
21 circumstances of the particular case require appointment to afford due process of law, only
22 indigent petitioners qualify for court appointed counsel. *Eskridge v. Rhay*, 345 F.2d 778, 782
23 (9th Cir. 1965). Petitioner has submitted a financial affidavit showing that he has no resources
24 and that it has been at least ten years since he has been employed.

25 Accordingly, the Court will grant petitioner’s motion for the appointment of Riordan as
26 his counsel for purposes of the instant habeas corpus action, effective December 23, 2003.

27 IT IS SO ORDERED.
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1 DATED: January 30, 2006

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JEREMY FOGEL
United States District Judge

1 This Order has been served upon the following persons:

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